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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,076	04/18/2001	David D. Hadden	1004-001	8830

7590 09/23/2005

Mr. Gene Pease, CEO
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EXAMINER

COLON, CATHERINE M

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/837,076

Applicant(s)

HADDEN ET AL.

Examiner

C. Michelle Colon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,6-9 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4,6-9 and 31-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Final Office Action in response to the communication received on June 24, 2005. Claims 1-3, 5 and 10-30 have been cancelled. Claims 4 and 6-9 have been amended. Claims 31-33 have been added. Claims 4, 6-9 and 31-33 are now pending in this application.

Response to Amendment

2. Applicant's cancellation of claims 1-3, 5 and 10-30 is acknowledged. Applicant's amendment of claims 4 and 6-9 is acknowledged. Applicant's addition of claims 31-33 is acknowledged.

Claim Objections

3. Claims 32 and 33 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 32 and 33 fail the infringement test. The infringement test for determining whether a claim is a proper dependent claim is that it shall include every limitation of the claim from which it depends or, in other words, that it shall not conceivably be infringed by anything which would not also infringe the basic claim. See MPEP § 608.01(n, III).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 4, 6, 7 and 31-33 are rejected under 35 U.S.C. 102(a,e) as being anticipated by Hollingsworth (U.S. 6,157,808).

As per claim 31, Hollingsworth discloses a method comprising steps performed by a computer including

defining a role having a measurable performance and a separately measurable skill, in which an improvement of the skill at least plausibly improves the performance (col. 3, line 65-col. 4, line 5; col. 5, lines 26-42 and 60-62; A job is a role with a measurable performance, where the job is associated with discrete units of work called tasks that can also be measured. A job requirement describes skills that are also measured and which may improve the performance of the job.);

associating an individual with the role (col. 5, lines 26-42; col. 6, lines 49-54; Employees may be associated with jobs.);

before the occurrence of an event that may increase a skill level of the individual, measuring the individual's skill to determine a skill level and measuring the individual's

performance as a first actual performance metric (col. 7, lines 34-36; col. 9, lines 49-55; An employee's collective skill set and the status of each skill level are maintained in a database. A Job Performance Measure (JPM) table also maintains the job performance measure for each employee.);

after the occurrence of an event, assessing the individual's performance as a second actual performance metric (col. 11, lines 32-67; Figure 14; An employee's job performance is assessed after training/lessons. Additionally, the system provides a user with a GUI to view and manage employee evaluation schedules and training/lesson results.);

analyzing a relationship between the first and second actual performance metrics and the skill of the individual before and after the event occurrence on a computer (col. 8, lines 17-60; col. 10, lines 36-47 and 52-57; A tasks table for employees allows the analysis of employee job performance prior to and after training/lessons.); and

determining whether the event occurrence increased the performance of the individual based at least primarily on the relationship between the first and second actual performance metrics and the skill of the individual (col. 8, lines 17-60; col. 9, lines 12-18; The reference discloses analyzing training results to determine the existence of a potential relationship between certifications (representing the attainment of required skill levels to support a certain level of job performance) and lessons (training delivered to impart or improve skill levels).).

As per claim 4, Hollingsworth discloses the method of Claim 31 further comprising:

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analyzing a difference between a required skill level for the role and the measured skill level of the individual and determining if training is necessary to raise the skill level to the required skill level (col. 7, lines 20-47; col. 12, lines 57-64; The system determines whether or not an employee requires a certification, which represents the attainment of required skill levels to support a certain level of job performance.).

As per claim 6, Hollingsworth discloses the method of Claim 31 further comprising:

comparing the measured skill levels of the individual before and after the event occurrence (col. 11, lines 32-42; Employees' skills are measured using training evaluation results.); and

correlating any difference between the measured skill levels of the individual before and after the event occurrence with the ability of the individual to carry out the defined performance (col. 7, lines 20-47; col. 12, lines 57-64; The system associates certain skill levels with successful job performance.).

As per claim 7, Hollingsworth discloses the method of Claim 31 further comprising;

comparing the measured skill level of the individual before and after the event occurrence with the first and second actual performance metrics (col. 11, lines 32-42; Employees' skills and job performance are measured using training evaluation results.); and

determining a result of changes in the measured skill level of the individual

before and after the event occurrence on the ability of the individual to carry out the defined performance (col. 7, lines 20-47; col. 12, lines 57-64; The system associates certain skill levels with successful job performance.).

Claims 32 and 33 recite substantially similar subject matter as claims 4-7 and 31 above. Therefore, claims 32 and 33 are rejected on the same basis as claims 4-7 and 31 above.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollingsworth (U.S. 6,157,808).

As per claim 8, Hollingsworth discloses the method of Claim 31 wherein the event occurrence is a training event bearing on the actual skill level of the individual and further comprising:

measuring first and second actual performance metrics for the performance of individuals before and after training events to determine the effectiveness of the training on the actual skill level of the individuals (col. 7, lines 34-36; col. 9, lines 49-55; col. 11, lines 32-35 and 54-56; Employees' collective skill sets and the status of each skill level

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are maintained in a database. A Job Performance Measure (JPM) table also maintains the job performance measure for each employee. Exams are given to employees after training/lessons to assess the skill levels of employees.). However, Hollingsworth does not expressly disclose measuring first and second actual performance metrics of individuals where one individual is subject to training and *another is not* and comparing the first and second actual performance metrics of the second individual with the first and second actual performance metrics of the individual to determine effectiveness of the training event on the actual skill level. However, since Hollingsworth already teaches providing exams (usually at the end of training) to employees to assess employees' skill levels (col. 11, lines 54-56; col. 14, lines 21-25), at the time of the invention it would have been obvious to a person of ordinary skill in the art to simply give the exams to *all* employees (including those who have not taken the training) and then perform the comparison of skill levels between employees who have had training and those who have not, as doing so would not require any modification to the training and would only require the administering of an exam to a certain group of employees. Furthermore, since the exams are designed to specifically assess employee skill levels (col. 12, lines 6-9), comparing exams results between trained and non-trained employees would provide very targeted information relating to the effectiveness of the training and thus, aid in the improvement/enhancement of the training provided to employees, which is a goal of the system of Hollingsworth (col. 3, lines 6-15).

As per claim 9, Hollingsworth does not expressly disclose the method of Claim 8 further comprising: identifying an increase between the first and second actual

performance metrics of the individual and the second individual; and indicating an influence other than the training event causing the increase between the first and second actual performance metrics of the individual and the second individual. However, Hollingsworth does disclose maintaining various information related to the performance of tasks such as duty area, activity type, procedures, standards, etc. (col. 13, lines 2-8 and 24-25), which introduces other factors for consideration in the analysis of job performance of an individual aside from training. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Hollingsworth to identify an increase between the first and second actual performance metrics of the individual and the second individual and indicate an influence other than the training event that caused the increase between the first and second actual performance metrics of the individual and the second individual since the system of Hollingsworth maintains various relationships among task data, which would enable the identification of an influence over job performance aside from training (col. 13, lines 24-29) and furthermore, since the training event would have to be eliminated as an influence since only one individual underwent training while both individuals experienced an increase in performance.

Response to Arguments

8. Applicant's arguments are moot in view of the new grounds of rejections.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Gray et al. (U.S. 6,944,596) discusses a system for employee analysis based on results of training.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Colon whose telephone number is 571-272-

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6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

or faxed to:

703-872-9306 [Official Communications; including After Final
communications labeled "Box AF"]

571-273-6727 [For status inquiries, draft communication, labeled
"Proposed" or "Draft"]

Hand delivered responses should be brought to:

United States Patent and Trademark Office

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cmc

September 17, 2005


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